

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSE RODRIGUEZ,

Plaintiff,
vs.
FEDEX FREIGHT EAST, INC.,
Defendant.

Bkrptcy No. 04-47510-PJS
Adversary No. 05-5149-PJS
HON. PHILLIP J. SHEFFERLY
Case No. 08-CV-10637
HON. GEORGE CARAM STEEH

ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFF'S MOTION FOR CORRECTION OR MODIFICATION
OF THE RECORD (#70)

Plaintiff Jose Rodriguez moves to correct or modify the record transcript to reflect that: (1) Juror #2 answered "no" on June 27, 2008 when asked if she agreed with the jury's verdict; and (2) the court instructed the jury not to "[use] the Internet for any purpose regarding this case."

The court's own recall verifies that Juror #2 did in fact answer "no" when asked on June 27, 2008 if she agreed with the jury's verdict. However, contrary to plaintiff's assertion, the jury was never instructed to refrain from, "[using] the Internet for any purpose regarding this case." See also September 5, 2008 Order Denying Plaintiff's Motion for Judgment Notwithstanding the Verdict, at 7 (finding that "Rodriguez's argument that Juror #4 violated the court's preliminary jury instructions is erroneously premised on Michigan Model Civil Jury Instruction 2.07, *an instruction that was not given to the jury.*.) (emphasis in original).

Upon receiving the instant motion, the court directed Court Reporter Ronald DiBartolomeo to review his records in relation to Rodriguez's claims for relief, including the

court's reading of the jury instructions. The Court Reporter's review confirms the court's recollection of the events. Pursuant to the court's direction, the Court Reporter has filed a "Transcript of Addendum to Jury Trial - Pg. 26 held on June 27, 2008" (# 72) correcting the record to reflect that Juror #2 answered "no" on June 27, 2008 when asked if she agreed with the jury's verdict.

As it relates to plaintiff's assertion concerning the claimed Internet instruction, this court's instructions were agreed upon by counsel, read from the bench, and filed as a part of the court record. The Sixth Circuit pattern instructions as given included no reference to the Internet and such is consistent with the court's own recall and the record of the Court Reporter.

For the reasons set forth above, plaintiff Jose Rodriguez's motion to correct or modify the record transcript is hereby GRANTED, IN PART, to the extent the record has been corrected to reflect that Juror #2 answered "no" on June 27, 2008 when asked if she agreed with the jury's verdict. The remainder of Rodriguez's motion is hereby DENIED. In the event defendant Fed Ex has an independent recollection or information regarding the challenged events, Fed Ex may file a response within 10 days of the issuance of this Order.

SO ORDERED.

Dated: December 2, 2008

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
December 2, 2008, by electronic and/or ordinary mail.

s/Marcia Beauchemin
Deputy Clerk